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Appellants:	Denise J. Nelson et al.	Docket No.:	17,858.2
Serial No.:	10/750,505	Group:	3721
Confirmation	1813	Examiner:	Sameh Tawfik
Filed:	December 31, 2003	Date:	September 7, 2006
For:	Methods Of Folding Disposable Absorbent Articles		

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief in support of their Appeal of Examiner Tawfik's **Final Rejection** of claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 which was mailed on April 14, 2006.

On July 14, 2006, Appellants, pursuant to 37 C.F.R. 41.31 mailed a timely Notice of Appeal. Thus, the time period for filing this Brief ends on September 14, 2006.

Real Party in Interest

The present Application has been assigned to the Kimberly-Clark Worldwide, Inc.

Related Appeals and Interferences

There are no related appeals and/or interferences with regard to the present Application.

Status of Claims

Claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 remain in the application with claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 being finally rejected. Claims 9, 20, 23-34, 40, and 47 have been cancelled.

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Status of Amendments

No amendments were filed after the final Office Action mailed April 14, 2006.

Summary of Claimed Subject Matter

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

Independent claim 1 is directed to a method of folding a disposable absorbent article, as representatively illustrated, for example, in Figs. 7-17. The disposable absorbent article (30) has an initial upper surface (70), an initial lower surface (72), a longitudinal centerline (74), a transverse centerline (76), opposing first longitudinal side edges (46), and opposing first transverse end edges (48). Page 8, lines 1-5 and Figs. 3-6. The article (30) has an unfolded configuration. Page 16, lines 6-10. The method of folding includes forming one fold extending in a transverse direction by bringing a portion of the initial upper surface (70) into a facing relationship with another portion of the initial upper surface (70), the one fold being spaced between opposing first transverse end edges (48), the resulting partially-folded article having an intermediate first surface (80), an intermediate second surface (82) and opposing second transverse end edges (84), and thereafter forming a number, greater than one, of transversely extending folds in an accordion-like manner, the transversely extending accordion-like folds being spaced between opposing second transverse end edges (84) and thereby forming a folded article. Page 9, lines 1-31. The folded article has a ratio between a folded configuration and the unfolded configuration of no more than 0.14. Page 12, lines 15-22.

Independent claim 12 is directed to a method of folding a disposable absorbent article, as representatively illustrated, for example, in Figs. 7-17. The disposable absorbent article (30) has an initial upper surface (70), an initial lower surface (72), a longitudinal centerline (74), a transverse centerline (76), opposing first longitudinal side edges (46), opposing first transverse end edges (48), side margins (64), and opposing terminal side edges (60). The article (30) has an unfolded configuration. Page 16, lines 6-10. The method of folding includes forming at least one longitudinally extending fold in each side margin (64) by folding each first longitudinal

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side edge (46) inward toward the initial upper surface (70) and thus bringing at least a portion of the initial upper surface (70) into facing relationship with another portion of the initial upper surface (70), then forming one fold extending in a transverse direction by bringing a portion of the initial upper surface (70) into a facing relationship with another portion of the initial upper surface (70), the one fold being spaced between opposing first transverse end edges (48), the resulting partially-folded article having an intermediate first surface (80), an intermediate second surface (82), opposing second longitudinal side edges (47) and opposing second transverse end edges (84), and thereafter forming a number, greater than one, of transversely extending folds in an accordion-like manner, the transversely extending accordion-like folds being spaced between opposing second transverse end edges (84) and thereby forming a folded article. Page 10, lines 1-31. The folded article has a ratio between a folded configuration and the unfolded configuration of no more than 0.14. Page 12, lines 15-22.

Independent claim 35 is directed to a method of folding a disposable absorbent article, as representatively illustrated, for example, in Figs. 7-17. The disposable absorbent article (30) has an initial upper surface (70), an initial lower surface (72), a longitudinal centerline (74), a transverse centerline (76), opposing first longitudinal side edges (46), and opposing first transverse end edges (48). Page 8, lines 1-5 and Figs. 3-6. The article (30) has an unfolded configuration. Page 16, lines 6-10. The method of folding includes forming a number, greater than two, of transversely extending folds in an accordion-like manner, the transversely extending folds being spaced between opposing first transverse end edges (48) and thereby forming a folded article. Page 9, lines 1-32. The folded article has a ratio between a folded configuration and the unfolded configuration of no more than 0.14. Page 12, lines 15-22.

Independent claim 42 is directed to a method of folding a disposable absorbent article, as representatively illustrated, for example, in Figs. 7-17. The disposable absorbent article (30) has an initial upper surface (70), an initial lower surface (72), a longitudinal centerline (74), a transverse centerline (76), opposing first longitudinal side edges (46), opposing first transverse end edges (48), side margins (64), and opposing terminal side edges (60). The article (30) has an unfolded configuration. Page 16, lines 6-10. The method of folding includes forming at least one longitudinally extending fold in each side margin by folding each first longitudinal side edge (46) inward toward the initial upper surface (70) and thus bringing at least a portion of the initial upper surface (70) into facing relationship with another portion of the initial upper surface

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(70), then forming a number, greater than two, of transversely extending folds in an accordion-like manner, the transversely extending folds being spaced between opposing first transverse end edges (48) and thereby forming a folded article. Page 9, lines 1-32. The folded article has a ratio between a folded configuration and the unfolded configuration of no more than 0.14. Page 12, lines 15-22.

Grounds of Rejection to be Reviewed on Appeal

Ground 1

Claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Under Ground 1, claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 are argued as a group.

Ground 2

Claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 stand rejected under 35 U.S.C. § 103(a) as being obvious and therefore unpatentable over Japanese Patent Application JP 10-095,481 published on April 14, 1998 by Narawa et al. for applicant KAO Corporation (hereinafter "Kao"). Under Ground 2, claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 are argued as a group.

Argument

Ground 1 -- Rejection Of Claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48

Claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Appellant respectfully submit that the Examiner's rejection is improper and should be reversed.

The Examiner has the initial burden to establish a reasonable basis to question the enablement provided for the claimed invention. *In re Wright*, 999 F.2d 1557, 1562, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993) (examiner must provide a reasonable explanation as to why the scope of protection provided by a claim is not adequately enabled by the disclosure). See MPEP § 2164.04. Independent claims 1, 12, 35, and 42 claim, *inter alia*, the "article has a ratio between a folded configuration and the unfolded configuration of no more than 0.14." The Examiner alleges that these claims are not enabled by the specification that includes the

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statement at page 3, lines 6-7 that the "article has a ratio between a folded configuration and the unfolded configuration of no more than 0.15."

First, the ratio of no more than 0.14 is supported in the specification at page 11, lines 21-22 where it is stated that "[d]esirably, the ratio between the folded configuration and the unfolded configuration is no more than 0.15; alternatively no more than 0.14... ."

Second, the Examiner is arguing that although a ratio of 0.15 or less is enabled of the disclosure, achieving a ratio of 0.14 or less would require undue experimentation on the part of one skilled in the art of folding disposable absorbent articles, even though "no more than 0.14" is within the disclosed range of "no more than 0.15." It is not clear which, if any, of the eight factors listed in MPEP § 2164.01(a) the Examiner considered in making this rejection. It is improper to conclude that a disclosure is not enabling based on an analysis of only one of the above factors while ignoring one or more of the others. The examiner's analysis must consider all of the evidence related to each of these factors, and any conclusion of nonenablement must be based on the evidence as a whole. *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988).

Because the Examiner has not provided a reasonable explanation for this rejection, and for at least the reasons set forth above, Appellants respectfully request that all the rejections under 35 U.S.C. § 112 be withdrawn.

Ground 2 – Rejection Of Claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48

Claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 stand rejected under 35 U.S.C. § 103(a) as being obvious and therefore unpatentable over Kao. Appellants respectfully submit that the Examiner's rejection is improper and should be reversed. In particular, Kao fails to teach or suggest all of the claim limitations.

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

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First, there is no motivation or suggestion in Kao for one of skill in the art to modify the Kao disclosure to achieve the claimed invention, and the Examiner has not described any motivation or suggestion outside of Kao, such as in general knowledge, to do so. In fact, the only motivation or suggestion cited by the Examiner is one in the opposite direction in that Kao specifically teaches that claimed invention produces undesirable and unworkable results. One skilled in the art does not seek "optimum or workable ranges" in an area that has been shown to produce far from optimum results.

Second, the Examiner has not described in any manner how or even if there might be a reasonable expectation of success in proceeding contrary to the teachings of Kao.

Third, all the claim limitations are not taught or suggested by the prior art reference. As stated above, any teachings or suggestions in Kao are away from the claimed invention.

Further, and despite evidence to the contrary, we'll assume for the sake of argument that the Examiner has met the three criteria for presenting a *prima facie* case for obviousness. A *prima facie* case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997). Contrary to the facts of *Geisler*, Kao is unequivocal with respect to the lower limit of workable ratios. "If the thickness ratio becomes less than 15% [0.15 as relates to the present application] the diaper becomes hard and the texture worsens." English translation of Kao at paragraph 19. There is no suggestion in Kao that there is no limit to the smaller-ratio-is-better concept. Kao, in fact, places a distinct limit on that concept and teaches that anything below 0.15 produces undesirable results.

As a result, one of the ordinary skill in the art reading Kao would not be lead to conclude that he/she should search for "optimum or workable ranges" below a ratio of 0.15. He/she would in fact be lead away from such a search.

For at least the same reasons just discussed for the independent claims, the dependent claims cannot be rendered obvious by Kao. Thus, the rejection of the dependent claims is respectfully requested to be withdrawn.

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For at least the reasons set forth above, Appellants respectfully request that all the rejections under 35 U.S.C. § 103 be withdrawn.

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Conclusion

For the reasons stated above it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be **reversed** by the Board.

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: (920) 721-8863.

Respectfully submitted,

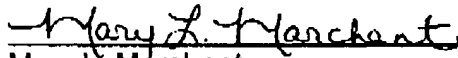
DENISE J. NELSON ET AL.

By


Randall W. Fieldhack
Registration No.: 43,611

CERTIFICATE OF TRANSMISSION

I, Mary L. Marchant, hereby certify that on September 7, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.


Mary L. Marchant

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Claims Appendix

The claims on appeal are:

1. A method of folding a disposable absorbent article, the article having an initial upper surface, an initial lower surface, a longitudinal centerline, a transverse centerline, opposing first longitudinal side edges, opposing first transverse end edges and an unfolded configuration, the method of folding comprising: forming one fold extending in a transverse direction by bringing a portion of the initial upper surface into a facing relationship with another portion of the initial upper surface, the one fold being spaced between opposing first transverse end edges, the resulting partially-folded article having an intermediate first surface, an intermediate second surface and opposing second transverse end edges, and thereafter forming a number, greater than one, of transversely extending folds in an accordion-like manner, the transversely extending accordion-like folds being spaced between opposing second transverse end edges and thereby forming a folded article and wherein the folded article has a ratio between a folded configuration and the unfolded configuration of no more than 0.14.
2. The method described in claim 1, wherein the number of accordion-like transverse extending folds is an even number.
3. The method described in claim 2, wherein the number of accordion-like transverse extending folds is 2.
4. The method described in claim 2, wherein the one fold extending in a transverse direction is located substantially adjacent the transverse centerline.

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5. The method described in claim 4, wherein the accordion-like transversely extending folds are spaced substantially equally between opposing second transverse end edges.

6. The method described in claim 1, wherein the folded article has a ratio between the folded configuration and the unfolded configuration of no more than 0.08.

7. The method of claim 6, wherein the folded article is an infant diaper.

8. The method described in claim 1, wherein the accordion-like transversely extending folds are spaced substantially equally between opposing second transverse end edges.

10. The method of claim 1, wherein the folded article has a ratio between the folded configuration and the unfolded configuration of no less than 0.04.

11. The method of claim 10, wherein the folded article is an infant diaper.

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12. A method of folding a disposable absorbent article, the article having an initial upper surface, an initial lower surface, a longitudinal centerline, a transverse centerline, opposing first longitudinal side edges, opposing first transverse end edges, side margins, opposing terminal side edges and an unfolded configuration, the method of folding comprising: forming at least one longitudinally extending fold in each side margin by folding each first longitudinal side edge inward toward the initial upper surface and thus bringing at least a portion of the initial upper surface into facing relationship with another portion of the initial upper surface, then forming one fold extending in a transverse direction by bringing a portion of the initial upper surface into a facing relationship with another portion of the initial upper surface, the one fold being spaced between opposing first transverse end edges, the resulting partially-folded article having an intermediate first surface, an intermediate second surface, opposing second longitudinal side edges and opposing second transverse end edges, and thereafter forming a number, greater than one, of transversely extending folds in an accordion-like manner, the transversely extending accordion-like folds being spaced between opposing second transverse end edges and thereby forming a folded article and wherein the folded article has a ratio between a folded configuration and the unfolded configuration of no more than 0.14.

13. The method described in claim 12, wherein the number of accordion-like transverse extending folds is an even number.

14. The method described in claim 13, wherein the number of accordion-like transverse extending folds is 2.

15. The method described in claim 13, wherein the one fold extending in a transverse direction is located substantially adjacent the transverse centerline.

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16. The method described in claim 15, wherein the accordion-like transversely extending folds are spaced substantially equally between opposing second transverse end edges.

17. The method described in claim 16, wherein the folded article has a ratio between the folded configuration and the unfolded configuration of no more than 0.08.

18. The method of claim 17, wherein the folded article is an infant diaper.

19. The method described in claim 12, wherein the accordion-like transversely extending folds are spaced substantially equally between opposing second transverse end edges.

21. The method of claim 12, wherein the folded article has a ratio between the folded configuration and the unfolded configuration of no less than 0.04.

22. The method of claim 21, wherein the folded article is an infant diaper.

35. A method of folding a disposable absorbent article, the article having an initial upper surface, an initial lower surface, a longitudinal centerline, a transverse centerline, opposing first longitudinal side edges, opposing first transverse end edges and an unfolded configuration, the method of folding comprising: forming a number, greater than two, of transversely extending folds in an accordion-like manner, the transversely extending folds being spaced between opposing first transverse end edges and thereby forming a folded article and wherein the folded article has a ratio between a folded configuration and the unfolded configuration of no more than 0.14.

36. The method described in claim 35, wherein the number of transversely extending accordion-like folds is an odd number.

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37. The method described in claim 35, wherein the number of transversely extending accordion-like folds is an odd number greater than 4.

38. The method described in claim 37, wherein the number of transversely extending accordion-like folds is 5.

39. The method described in claim 38, wherein the transversely-extending accordion-like folds are spaced substantially equally between opposing first transverse end edges.

41. The method of claim 39, wherein the folded article is an infant diaper.

42. A method of folding a disposable absorbent article, the article having an initial upper surface, an initial lower surface, a longitudinal centerline, a transverse centerline, opposing first longitudinal side edges, opposing first transverse end edges, side margins, opposing terminal side edges and an unfolded configuration, the method of folding comprising: forming at least one longitudinally extending fold in each side margin by folding each first longitudinal side edge inward toward the initial upper surface and thus bringing at least a portion of the initial upper surface into facing relationship with another portion of the initial upper surface, then forming a number, greater than two, of transversely extending folds in an accordion-like manner, the transversely extending folds being spaced between opposing first transverse end edges and thereby forming a folded article and wherein the folded article has a ratio between a folded configuration and the unfolded configuration of no more than 0.14.

43. The method described in claim 42, wherein the number of transversely extending accordion-like folds is an odd number.

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44. The method described in claim 42, wherein the number of transversely extending accordion-like folds is an odd number greater than 4.

45. The method described in claim 44, wherein the number of transversely extending accordion-like folds is 5.

46. The method described in claim 45, wherein the transversely-extending accordion-like folds are spaced substantially equally between opposing first transverse end edges.

48. The method of claim 46, wherein the folded article is an infant diaper.

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Evidence Appendix

None.

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Related Proceedings Appendix

None.

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Respectfully submitted,

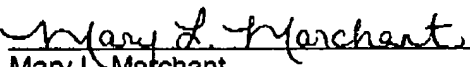
DENISE J. NELSON ET AL

By: 

Randall W. Fieldhack
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I, Mary L. Marchant, hereby certify that on September 7, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.


Mary L. Marchant

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